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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,550	07/07/2003	Robert G. Metzger	5490-209/CPA	5858

27572 7590 12/27/2005

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EXAMINER

PRONE, CHRISTOPHER D

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p align="center">10/614,550</p>	<p>Applicant(s)</p> <p align="center">METZGER ET AL.</p>	
	<p>Examiner</p> <p align="center">Christopher D. Prone</p>	<p>Art Unit</p> <p align="center">3738</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 9, 12, 16, 19, 22, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11, 13-15, 17, 18, 20, 21, 23-25 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date, _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/2/03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

Applicant's election of election of Species A and Subspecies C is directed to Claims 1-8, 10, 11, 13-15, 17, 18, 20, 21, 23-25, and 28 with traverse in the reply filed on 10/3/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Upon further review claim 22 has been withdrawn as for being directed towards unelected species D, wherein the first internal mating shape is substantially different than that of the second internal mating shape.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 11, 13-15, 17, 18, 20, 21, 23-25, and 28 are rejected under 35 U.S.C. 103 as being unpatentable over United States patent 5,776,201 Colleran et al.

In reference to claims 1-5, 8, 10, 11, 13-15, 17, 18, 20, 21, 23-25, and 28 Colleran discloses the invention substantially as claimed being modular knee joint system comprising first and second femoral components (10a) and (10f), a tibial component (31), a mobile bearing surface (33) and (34), a fixed bearing member (35),

wherein both the first and second femoral components have an equal overall anterior to posterior dimension, substantially equal interior anterior to posterior dimensions, and substantially equal interior mating shapes.

In reference to claims 6 and 7, since the applicant fails to specifically define the meaning of the a posterior stabilized femoral component and the fully constrained femoral component, they are being viewed in a very broad manner. Therefore the femoral components disclosed by Colleran are being considered to be a first cruciate component, a posterior stabilized femoral component and the fully constrained femoral component. The applicant is advised to refer to section 211.01 of the MPEP for further clarification of the manner in which the claim is being interpreted.

Colleran does not specifically recite that the first and second femoral components have different overall medial to lateral dimensions. However, he teaches the use of a femoral implant system with multiple components where he varies the overall lateral length of the components in order to provide the surgeon with a variety of implants to choose from at the time of surgery.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the medial to lateral dimension in order to provide the surgeon with options for finding the best fit for each patient.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher D Prone
Examiner
Art Unit 3738

CDP
CDP


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700